Albertsons terminates merger agreement, files lawsuit against Kroger

December 11, 2024

Albertsons Cos. announced it has exercised its right to terminate its merger agreement with Kroger after the U.S. District Court in Oregon and the King County Superior Court for the State of Washington issued injunctions with respect to the proposed merger Dec. 10.

“Given the recent federal and state court decisions to block our proposed merger with Kroger, we have made the difficult decision to terminate the merger agreement. We are deeply disappointed in the courts’ decisions,” said Vivek Sankaran, Albertson’s CEO.

“We start this next chapter in strong financial condition with a track record of positive business performance,” he said. “Over the last two years, we have invested in our core business and in new sources of revenue, while enhancing our capabilities through the rollout of new technologies. All of this has been built on a rich asset base, including our beloved brands in premium locations with substantial real estate value. These assets provide us the opportunity to optimize the acceleration of our Customers for Life strategy and other value-creating initiatives. We are excited about our agenda to create long-term value and are committed to returning cash to our stockholders both in the near term and in the future. We will be providing additional details on our plan no later than our earnings conference call in January 2025. Finally, we want to thank all our 285,000 dedicated team members for their relentless focus on taking care of our customers and communities that we serve, day in and day out.”

“This leadership team continues to transform the business and adapt to an ever-changing consumer landscape,” said Jim Donald, board chair. “The board of directors is energized by the progress made to date and is confident in the leadership team’s plans to continue driving long-term stockholder value.”

Furthermore, Cerberus Capital Management, the company’s largest shareholder, stated that, “While we are disappointed with the courts’ decisions, we remain confident in Albertsons’ strength as a standalone company, and we believe that it is significantly undervalued in its current trading range. Accordingly, Cerberus has no intention of selling any of its shares in the company. Cerberus initially invested in Albertsons in 2006, with additional investments in 2013 and 2015 to support significant and strategic value creation opportunities. As a long-term investor in and partner to Albertsons across multiple investments and throughout the evolution of its competitive environment, Cerberus is proud of the company’s performance and it will continue to be a strong supporter of Albertsons, its talented leadership team, and its dedicated associates.”

Additionally, Albertsons Cos. filed a lawsuit against The Kroger Co. in the Delaware Court of Chancery, bringing claims for willful breach of contract and breach of the covenant of good faith and fair dealing arising from Kroger’s failure to exercise “best efforts” and to take “any and all actions” to secure regulatory approval of the companies’ agreed merger transaction, as was required of Kroger under the terms of the merger agreement between the parties. Pursuant to the Court of Chancery rules, Albertsons’ complaint against Kroger is temporarily under seal.

Albertsons is seeking billions of dollars in damages from Kroger to make Albertsons and its shareholders whole. Albertsons’ shareholders have been denied the multi-billion-dollar premium that

Kroger agreed to pay for Albertsons' shares and have been subjected to a decrease in shareholder value on account of Albertsons' inability to pursue other business opportunities as it sought approval for the transaction. Albertsons also seeks to recover for the time, energy and resources it invested in good faith to try to make the merger a success.

In light of the Oregon and Washington courts' rulings enjoining the company's proposed merger with Kroger and Kroger's failure to close the merger before the contractual deadline to do so, Albertsons has notified Kroger of its decision to terminate the merger agreement. This termination entitles Albertsons to an immediate $600 million termination fee and removes contractual constraints on Albertsons' ability to pursue other strategic opportunities.

In addition to the $600 million termination fee, Albertsons is entitled to relief reflecting the multiple years and hundreds of millions of dollars it devoted to obtaining approval for the merger, along with the extended period of unnecessary limbo Albertsons endured as a result of Kroger's actions. Albertsons further seeks to recover certain expenses and costs.

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